WP(C) 3812/2007

BEFORE

HON’BLE MR.JUSTICE RANJAN GOGOI

Having regard to the subject matter involved and the records produced in original, final orders in the writ petition are being passed at this stage with the consent of the parties.

The petitioner is a fixed pay employee of the Assam Legislative Assembly Secretariat. He has been in continuous employment as a Counter Assistant since the year 1996. By an order dated 12.2.2007 passed by the Secretary of the Legislative Assembly, the service of the petitioner has been terminated. Aggrieved, this writ petition has been filed.

As the termination of the petitioner was made without holding any enquiry or without giving any opportunity, the Court desired to know the reasons for the impugned termination.

In response, the records in original showing the reasons for the termination of the petitioner have been placed before the Court. The said records would go to show that the petitioner was arrested in connection with Jalukbari Police Station Case No.59 of 2007 under Sections 120/120(B) IPC read with Sections 3, 4 and 5 of the Explosive Substance Act read with Sections 10/13 of the Unlawful Activities (Prevention) Act. Following the arrest of the petitioner, a note was put up to the Secretary, Legislative Assembly Secretariat suggesting that in view of the arrest made the petitioner’s service should be terminated as he is a fixed paid/temporary employee. The Secretary endorsed the file to the Hon’ble Speaker. The Hon’ble Speaker of the Legislative Assembly approved the suggested action following which the impugned termination order has been issued.

From the facts emanating from the records in original placed before the Court, as noticed above, it is clear and evident that the only ground for termination of the petitioner’s service is his arrest and detention in connection with Jalukbari Police Station Case No.59 of 2007. Arrest of a confirmed Government employee in a criminal case, ipso facto, cannot give rise to an order of termination. At best, if such a Government employee is to be kept in detention for a period of more than 48 hours, he is liable to be put under suspension under the provisions of the Assam Services (Discipline and Appeal) Rules, 1964. Merely because the petitioner was a temporary employee on fixed pay, though he had served for over 10(ten) continuous years, a different course of action will not be justified. If a temporary or contingent employee cannot be placed under suspension, as a regular employee, surely, an order keeping his service in abeyance for sometime and a further enquiry in the matter by the appointing authority to satisfy itself as regards the veracity of the allegations made can be ordered. In the present case no enquiry whatsoever appears to have been made by the Respondents to satisfy themselves that there is some material or substance even, prima facie, in respect of the allegations/charges levelled against the petitioner in Jalukbari Police Station Case No.59 of 2007.Merely because the criminal case was registered against the petitioner wherein he was arrested, the service of the petitioner was terminated. No opportunity was also given to the petitioner to controvert the proposed action on the basis of such version of the allegations in the criminal case. Surely, such a course of action, in contradistinction to the course of action adopted, would have better serve the cause of justice. In view of the above, the Court is of the view that this writ petition should be allowed, the order dated 12.2.2007 should be set aside and the petitioner should be reinstated in service but only after the Respondents satisfy themselves that the materials available in the Case Diary of Jalukbari PS Case No.59 of 2007 sufficiently implicate the petitioner. Necessary action in compliance will be initiated and completed by the Respondents within a period of 2(two) weeks from today. As the matter will eventually be laid before a high constitutional authority, i.e., the Hon’ble Speaker, the Court is confident that the matter will be dealt with in a fair and unbiased manner.

Writ Petition shall stand allowed as indicated above.